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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,723	07/23/2001	Mark A. Lauer	LAUM-004	5523

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EXAMINER

KLIMOWICZ, WILLIAM JOSEPH

ART UNIT PAPER NUMBER

2652

DATE MAILED: 12/24/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/912,723

Applicant(s)

LAUER, MARK A.

Examiner

William J. Klimowicz

Art Unit

2652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

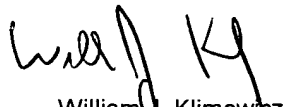
Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
William J. Klimowicz  
Primary Examiner  
Art Unit: 2652

Continuation of 5. does NOT place the application in condition for allowance because: The Examiner maintains the rejection for the reasons articulated in the Office action made FINAL (Paper No. 8, mailed October 3, 2003) It is noted that the Applicant had requested that the Examiner "provide a photocopy of his dictionary definition" as it relates to the word "adjoin." It appears that the Applicant maintains that as long as there is a single definition which fits the Applicant's arguments, that this is the exclusive meaning that must be used when interpreting the claim word in question. It also appears that the Applicant is alleging that the definition of the word "adjoin" is exclusive to the meaning of the word "adjoining." See Applicant's arguments at page 3 of the Request for Reconsideration (Paper No. 9, filed December 8, 2003.)

On this point the Examiner respectfully disagrees. Moreover, the Examiner has, as per Applicant's request, submitted a photocopy of the dictionary definition of the word "adjoin." Moreover, the Examiner notes that the word "adjoin" as set forth by Webster's II New Riverside University Dictionary includes in its alternative form of grammar, the word "adjoining" which the Applicants appear to maintain, is somehow unrelated or unconnected to the word "adjoin." As such, the Applicant's arguments as it pertains to the meaning of "adjoining" is meritless.

Moreover, as has been widely held in patent practice and law, more recently in *Intellectual Property Development Inc. v. UA-Columbia Cablevision of Westchester Inc.* 67 USPQ2d 1385 (CAFC 2003), dictionaries, encyclopedias, and treatises, publicly available at the time the patent is issued are objective resources that serve as reliable sources of information on the established meanings that would have been attributed to the claim terms by those skilled in the art, as observed by Judge Alvin Schall. .

WEBSTER'S II

New Riverside

University

Dictionary

PROPERTY U.S. GOVERNMENT

organic compound,  $C_{10}H_{16}N_5O_8$ , that is, a structural component of nucleic acids.

**adenosine di-phosphate** (dī-fōs'fāt) *n.* ADP.

**adenosine mon-o-phosphate** (mōn'ō-fōs'fāt) *n.* 1. Cyclic AMP. 2. AMP.

**adenosine triphosphate** *n.* ATP.

**ad-e-no-vi-rus** (ād'n-ō-vī'ras) *n.* Any of various animal viruses that cause respiratory diseases in humans. —**ad-e-no-vi-ral** *adj.*

**ad-en-yl-ate cy-clase** (ā-dēn'ī-lī sī'klās, ād'n-īl'ī) or **ad-e-nyl cyclase** (ād'n-īl) *n.* [ADEN(INE) + -YL + -ATE + CYCL(O) + -ASE.] The enzyme that catalyzes formation of cyclic AMP from ATP.

**ad-ept** (ā-dēpt') *adj.* [Lat. *adeptus*, p. part. of *adipisci*, to arrive at.] Highly skilled: EXPERT. —*n.* (ād'ēpt'). A highly skilled person. —**ad-ept-ly** *adv.* —**ad-ept-ness** *n.*

**ad-e-quate** (ād't-kwīt) *adj.* [Lat. *adaequatus*, p. part. of *adaequare*, to equalize: *ad-*, to + *aequare*, to make equal < *aequus*, equal.] 1. Able to satisfy a requirement. 2. Barely sufficient of satisfactory.

—**ad-e-qua-cy** (-kwā-sē), **ad-e-quate-ness** *n.* —**ad-e-quate-ly** *adv.*

**à deux** (ā' dōe') *adj.* [Fr.] Of or involving two individuals, esp. in private. —*adv.* Privately with only two individuals involved < picnicking *à deux* >.

**ad-here** (ād-hīr') *vi.* —**hered**, —**hering**, —**heres**. [Fr. *adhérer* < Lat. *adhaerere*, to stick to: *ad-*, to + *haerere*, to stick.] 1. To stick fast or together by or as if by being glued. 2. To be devoted as a supporter or follower. 3. To follow without deviation.

**ad-her-ence** (ād-hīr'ēns) *n.* 1. The process or state of adhering. 2. Faithful attachment or support: DEVOTION.

**ad-her-ent** (ād-hīr'ēnt) *adj.* 1. Sticking or holding fast. 2. Bot. Growing or fused together: ADNATE. —*n.* A supporter, as of a cause or individual. —**ad-her-ent-ly** *adv.*

**ad-he-sion** (ād-hē'zhən) *n.* [Fr. *adhésion* < Lat. *adhaesio* < *adhaerere*, to adhere.] 1. The act or state of adhering. 2. Attachment or devotion. 3. Assent. 4. An abnormal condition in which bodily tissues that are ordinarily separate become united by fibrous tissue. 5. Physical attraction or joining of two substances, esp. the macroscopically observable attraction of dissimilar substances. 6. A fibrous band holding together normally separate anatomical structures. 7. Pathological aggregation of dissimilar body materials to a visceral surface due to inflammation or trauma.

**ad-he-si-o-to-my** (ād-hē'zē-ō'fē-mē) *n.* *pl.* —*mies*. Surgical division of adhesions.

**ad-he-sive** (ād-hē'siv, -ziv) *adj.* 1. Tending to adhere: STICKY. 2. Gunned so as to adhere. —**ad-he-sive** *n.* —**ad-he-sive-ly** *adv.* —**ad-he-siveness** *n.*

**adhesive tape** *n.* Tape lined on one side with an adhesive.

**ad hoc** (ād hōk', hōk') *adj.* & *adv.* [Lat., to this.] For a specific purpose, case, or situation < formed an *ad hoc* committee >.

**ad hom-i-nem** (ād hōm'ō-nēm') *adj.* & *adv.* [Lat., to the man.] Appealing to personal prejudices or emotions rather than to reason < an *ad hominem* debate >.

**ad-i-a-bat-ic** (ād'ē-ā-bāt'ik, ā'dī-ā) *adj.* [Gk. *adiabatos*, impassable: *a-*, not + *diabatos*, passable (*dia*, through + *batos*, passable < *bainein*, to go).] Of, pertaining to, or designating a reversible thermodynamic process executed at constant entropy. —**ad-i-a-bat-ic-ally** *adv.*

**a-dieu** (ā-dyōō', ā-dōō') *interj.* [ME < OFr. *a dieu*, (I commend you) to God: *a*, to (< Lat. *ad*) + *Dieu*, God < Lat. *deus*.] Good-by. —*n.* *pl.* *a-dieus* or *a-dieux* (ā-dyōōz', ā-dōōz'). A farewell.

**ad in-fi-ni-tum** (ād in'fē-nī'təm) *adj.* & *adv.* [Lat., to infinity.] Without limit or end: FOREVER.

**ad in-ter-im** (ād in'tēr-əm) *adj.* & *adv.* [Lat.] In the meantime.

**ad-i-os** (ād'ē-ōs', ā'dē-) *interj.* [Sp. *adíos*: *a*, to (< Lat. *ad*) + *Dios*, God < Lat. *deus*.] Good-by.

**ad-i-po-cere** (ād'ō-pō-sīr') *n.* [ADIPO(SE) + Lat. *cera*, wax.] A brown, fatty, waxlike substance that forms on dead animal tissues in response to moisture.

**ad-i-pose** (ād'ō-pōs') *adj.* [NLat. *adiposus* < Lat. *adeps*, lard.] Of or relating to animal fat: FATTY. —*n.* The fat found in adipose tissue. —**ad-i-pose-ness**, **ad-i-pose-ity** (-pōs'ī-tē) *n.*

**adipose tissue** *n.* Bodily connective tissue that contains stored cellular fat.

**ad-it** (ād'it) *n.* [Lat. *aditus*, access < *adire*, to approach: *ad-*, toward + *ire*, to go.] An almost horizontal entrance to a mine.

**ad-ja-cent** (ā-jā'sant) *adj.* [ME < Lat. *adjacens*, p. part. of *adjacere*, to lie near: *ad-*, near to + *jacere*, to lie.] 1. Close to: NEARBY < the house and adjacent pond >. 2. Next to: ADJOINING. —**ad-ja-cen-cy** *n.* —**ad-ja-cent-ly** *adv.*

\* **syns**: ADJACENT, ABUTTING, ADJOINING, BORDERING, CONTIGUOUS, CONTIGUOUS, JUXTAPOSED, MEETING, TOUCHING *adj.* *core meaning*: sharing a common boundary. < adjacent lots > *ant*: nonadjacent

**adjacent angle** *n.* Either of two angles having a common side and a common vertex.

**ad-ject-i-val** (āj'īk-tī'val) *adj.* Of, relating to, or functioning as an adjective. —**ad-ject-i-val-ly** *adv.*

**ad-ject-ive** (āj'īk-tīv) *n.* [ME < OFr. *adjectif* < Lat. *adjectivus* < *adjicere*, to add to: *ad-*, to + *jacere*, to throw.] 1. Any of a class of

words used to modify a noun or other substantive by limiting, qualifying, or specifying. 2. Any of a form class distinguished in English morphologically by one of several suffixes, as *-able*, *-ous*, *-er*, and *-est*, or syntactically by position in a phrase or sentence, as *white* in *a white house*. 3. A subordinate or dependent. —**ad-ject-ive-ly** *adv.*

**ad-jective pronoun** *n.* A pronoun acting as an adjective, as *which* in *Which cars?* or *yourself* in *You yourself said so*.

**ad-join** (ā-jōin') *v.* —**joined**, —**joining**, —**joins**. [ME *ajoinen* < OFr. *ajoindre* < Lat. *adjungere*, to join to: *ad-*, to + *jungere*, to join.]

—*vt.* 1. To be next to. 2. To attach by joining. —*vi.* To be in or nearly in contact.

**ad-joining** (ā-jōin'ing) *adj.* Bordering; contiguous.

**ad-journ** (ā-jūrn') *v.* —**jourled**, —**journing**, —**journs**. [ME *ajourner* < OFr. *ajourner*: *a*, to (< Lat. *ad*) + *jour*, day < Lat. *diurnum*.]

—*vt.* To suspend until a later stated time. —*vi.* 1. To suspend proceedings to another time or location. 2. Informal. To move from one location to another < adjourned to the den to read >. —**ad-journ-ment** *n.*

**ad-judge** (ā-jūj') *vt.* —**judged**, —**judging**, —**judges**. [ME *ajugen* < OFr. *ajuger* < Lat. *adjudicare*. —see ADJUDICATE.] 1. To determine by judicial procedure: ADJUDICATE. 2. To rule judicially. 3. To award (e.g., damages) by law. 4. To regard or consider.

**ad-ju-di-cate** (ā-jū'dī-kāt') *vt.* —**cat-ed**, —**cat-ing**, —**ates**. [Lat. *adjudicare*, *adjudicat*, to award to (judicially): *ad-*, to + *judicare*, to judge < *judex*, judge.] To hear and settle (a case) by judicial procedure. —**ad-ju-di-ca-tion** *n.* —**ad-ju-di-ca-tive** *adj.* —**ad-ju-di-ca-tor** *n.*

**ad-junct** (āj'ūngkt') *n.* [Lat. *adjunctum* < *adjunctus*, p. part. of *adjungere*, to join to. —see ADJOIN.] 1. One attached to another in a subordinate or dependent position. 2. One associated with another in a duty or service in a subordinate or auxiliary capacity. 3. A word or words added in order to clarify, qualify, or modify other words.

4. Logic. A nonessential attribute. —*adj.* 1. Added or connected in a subordinate or auxiliary capacity < an adjunct clause >. 2. Attached to a faculty or staff in a temporary or auxiliary capacity. —**ad-junc-tion** (ā-jūngk'shən) *n.* —**ad-junc-tive** *adj.*

**ad-jura-tion** (āj'ō-rā'shən) *n.* 1. A solemn command. 2. An earnest appeal: ENTREATY. —**ad-jur-a-to-ry** (ā-jōōr'ā-tōr'ē, -tōr'ē) *adj.*

**ad-jure** (ā-jōōr') *vt.* —**jured**, —**juring**, —**jures**. [ME *adjueren* < Lat. *adjurare*, to swear to: *ad-*, to + *jurare*, to swear.] 1. To command or enjoin solemnly, as under oath. 2. To appeal to earnestly: ENTREAT.

—**ad-jur'er**, **ad-jur'or** *n.*

**ad-just** (ā-jūst') *v.* —**just-ed**, —**just-ing**, —**justs**. [Obs. Fr. *adjuster* < OFr. *ajuster*: Lat. *ad*, to + Lat. *juxta*, near.] —*vt.* 1. To change so as to match or fit. 2. To bring into proper relationship. 3. To conform or adapt, as to new conditions. 4. To make accurate by regulation.

5. To decide how much is to be paid on (an insurance claim). 6. To correct (the range and direction of a gun) in firing. —*vi.* To adapt oneself: CONFORM. —**ad-just-a-ble** *adj.* —**ad-just-a-bly** *adv.* —**ad-just'er**, **ad-just'or** *n.*

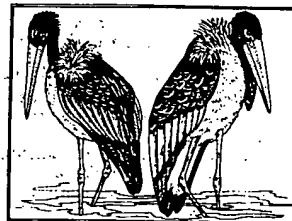
\* **syns**: ADJUST, ATTUNE, FIX, REGULATE, SET, TUNE UP *v.* *core meaning*: to alter (parts of a device) for proper functioning < adjust the valves >.

**ad-just-ment** (āj'jūst'mēt) *n.* 1. *a.* The act of making fit or conformable. *b.* The condition of being adjusted. 2. A means for adjusting. 3. The settlement of a debt or claim. 4. A correction or modification < made an adjustment on the phone bill >.

**ad-ju-tant** (āj'jū-tant) *n.* [Lat. *adjutans*, *adjutant*, p. part. of *adjutare*, freq. of *adjuvare*, to help: *ad-*, to + *juvare*, to help.] 1. An administrative staff officer who assists a commanding officer. 2. An assistant. 3. The marabout. —**ad-ju-tan-cy** (-tən-sē) *n.*

**adjutant general** *n.* *pl.* *adjutants general*. 1. An adjutant of a military unit having a general staff. 2. An officer in charge of the National Guard of one of the states of the United States. 3. **Adjutant General**. The chief administrative officer of the U.S. Army.

**adjutant stork** *n.* The marabout.



**adjutant stork**  
Approximately 5 feet high

**ad-ju-vant** (āj'jū-vənt) *n.* [Lat. *adjuvans*, *adjuvant*, p. part. of *adjuvare*, to help. —see AID.] 1. A pharmacological agent added to a drug

ā pat ā pay, ā arc ā father ē pet ē be hw which ī pit  
ī tie īr pier ō pot ō toe ō paw, for oi noise ōō took